IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4782 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MAGANLAL MEGHJIBHAI PATEL

Versus

DIST REGISTRAR

Appearance:

1. Special Civil Application No. 4782 of 1991

MR MILAN S JOSHI for Petitioner No. 1-2

..... for Petitioner No. 3-12

GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 25/09/2001

ORAL JUDGEMENT

1. The petitioners in this petition have challenged the common order passed in Appeals No.203 and 204 of 1990 by Gujarat State Cooperative Tribunal, Ahmedabad dated 30.4.1990. The petitioners no.1 and 2 are the employees

and petitioners no. 3 to 12 are the members of the managing committee of Dhoraji Taluka Sahakari Kharid Vechan Sangh Ltd. (hereinafter referred to as 'the Sangh').

2. The District Registrar, Cooperative Societies, Rajkot, on 31.3.1989 ordered inquiry under section 93 of the Gujarat Cooperative Societies Act in connection with the loss incurred by the Sangh due to mismanagement noticed in the audit during the period from 1.7.1984 to 30.6.1985. The inquiry officer submitted his report on 4.7.1989. It appears that there were as many as 20 charges levelled against the petitioners. However, the inquiry officer held the petitioners responsible for mismanagement on four charges. The Tribunal, after considering the material on record and hearing the parties, found two out of four charges proved against the petitioners. The said two charges are as under:

(1) Travelling expenses of Rs. 1640/- were claimed by the petitioners no. 3 and 4 who visited Bombay for recovery of the amount due for selling of wheat on credit to one Ratilal Gordhanbhai Traders of Patan though in fact no amount was due.

(2) Payment of commission of Rs. 5475/- by petitioners no. 1 and 2.

3. It may be stated that even for the said payment of commission made by the petitioners no. 1 and 2 who are the employees of the Sangh, all the members of the committee of the Sangh were held liable and to that extent, the Tribunal modified the order passed by the inquiry officer.

4. Learned Counsel appearing for the petitioners submitted that the Tribunal has committed an error in fixing the liability of the petitioners. In the submission of learned Counsel, the said finding is contrary to the material on record.

5. I have gone through the reasonings of the Tribunal and the inquiry report of the inquiry officer. After considering the same, it cannot be said that the authority has committed an error in passing the order against the petitioner. This being a petition under Article 227 of the Constitution of India, it is not open for this Court to re-appreciate the material on record and to take a different view in the matter. The findings

recorded by the Tribunal are essentially the findings of fact on appreciation of material on record. Therefore, it is not possible for me to accept the submission advanced on behalf of the petitioner. However, there is neither allegation in the show cause notice nor finding recorded that the petitioners misused the money of the Sangh with oblique motive, namely that they misappropriated the amount. Even if the allegations made against the petitioners are accepted, the same at the most, can be termed as bonafide mistake without any unjust or improper motive. It would not amount to misconduct inviting action under section 93 of the Act. Equally, the interest of the Sangh is required to be considered, namely that the Sangh should not suffer on account of mismanagement of the petitioner. This Court, while issuing Rule in the matter, by way of interim relief, stayed the implementation and operation of the impugned orders annexures A and B and directed the petitioners to deposit Rs. 7200/-. It was further clarified that the deposit of the aforesaid amount would not amount to earning any disqualification as mentioned in Rule 32 of the Gujarat Cooperative Societies Rules or in any other provisions of the Gujarat Cooperative Societies Act and status quo with regard to the petitioners' position as committee members shall continue. In compliance with the said order, the petitioners had deposited Rs. 7200/-. Office is directed to remit the said amount in the account of the respondent Sangh.

Subject to the observations and directions given above, this petition accordingly stands disposed of. Rule is discharged. No order as to costs.

(K.R.Vyas,J.)

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